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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 LOUISE KAHLER,

11 Plaintiff,

12 v.

13 VANTEX MORTGAGE GROUP, INC.,
14 *et al.*,

15 Defendants.
16

Civil No. 08cv2405-L(WMc)

**ORDER REMANDING ACTION TO
STATE COURT**

17 Defendants filed a notice of removal, removing this negligence, fraud, breach of contract
18 and unfair business practice action from state court. The notice of removal is based on 28
19 U.S.C. §§ 1441 and 1331. Because the court lacks subject matter jurisdiction, the action is
20 remanded to state court.

21 The federal court is one of limited jurisdiction. *See Gould v. Mutual Life Ins. Co. of N.Y.*,
22 790 F.2d 769, 774 (9th Cir. 1986). It possesses only that power authorized by the Constitution
23 or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). It is
24 constitutionally required to raise issues related to federal subject matter jurisdiction, and may do
25 so *sua sponte*. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998); *see Indus.*
26 *Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990).

27 “Any civil action of which the district courts have original jurisdiction founded on a claim
28 or right arising under the Constitution, treaties or laws of the United States shall be removable

1 without regard to the citizenship or residence of the parties.” 28 U.S.C. § 1441(b).

2 The Court has consistently interpreted jurisdictional statutes with an “arising
3 under” qualification . . . as “giv[ing] the lower federal courts jurisdiction to hear,
4 originally or by removal from a state court, only those cases in which a
5 well-pleaded complaint establishes either that [1] federal law creates the cause of
6 action or that [2] the plaintiff’s right to relief necessarily depends on resolution of a
7 substantial question of federal law.”

8 *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold and Easement*,
9 524 F.3d 1090, 1100 (9th Cir. 2008) quoting *Franchise Tax Bd. v. Constr. Laborers Vacation*
10 *Trust*, 463 U.S. 1, 27-28 (1983); *see also Empire Healthchoice Assurance, Inc. v. McVeigh*, 547
11 U.S. 677, 690 (2006).

12 “The burden of establishing federal jurisdiction is on the party seeking removal, and the
13 removal statute is strictly construed against removal jurisdiction.” *Nishimoto v.*
14 *Federman-Bachrach & Assoc.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990). “Federal jurisdiction
15 must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v.*
16 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

17 Although Defendants cite to the complaint, review of the complaint does not bear out the
18 claim of federal question jurisdiction. Defendants claim the court has original jurisdiction over
19 this action under 28 U.S.C. § 1331 because “Plaintiff has specifically pled claims for relief
20 arising under federal disclosure laws, the Fair Debt Collection Practices Act, FDIC §§ 226.18(d)
21 and 226.23(h), 24 CFR 3500.8(4), and 18 U.S.C. § 1001(a)(2).” (Notice of Removal at 2.)

22 Plaintiff alleges claims under California common and statutory law for declaratory relief,
23 injunctive relief, accounting, fraud, rescission, breach of fiduciary duty, interference with
24 contractual relations, breach of the covenant of good faith and fair dealing, reformation of
25 unconscionable contract, and unfair and unlawful business practice. (Notice of Removal Ex. A.)
26 The only reference to federal law is in the tenth cause of action for unfair and unlawful business
27 practice, which alleges violations of California Business and Professions Code Section 172000.
28 (*Id.* at 14.) As some of the alleged unlawful, unfair and/or fraudulent business practices,
Plaintiff alleges violations of certain federal regulations: “[f]ailure to comply with FDIC sections
226.18(d) & 226.23(h),” “[v]iolation of 24 CFR 3500.8(4),” “[v]iolation of 18 USC Section


1 1001(a)(2),” and “[f]ailing to comply with FDIC requirements.” (*Id.*) Such allegations are not
2 sufficient for a claim or right to arise under the laws of the United States as required by 28
3 U.S.C. § 1441(b).

4 “[F]or a state law claim to provide a basis for federal jurisdiction, the state law claim must
5 ‘turn on substantial questions of federal law,’ and ‘really and substantially involv[e] a dispute or
6 controversy respecting the validity, construction or effect of [federal] law.’” *Williston Basin*
7 *Interstate Pipeline*, 524 F.3d at 1102 quoting *Grable & Sons Metal Prods., Inc. v. Darue Eng’g*
8 *& Mfg.*, 545 U.S. 308, 312 (2005). Plaintiff alleged more than eleven different acts on which
9 she based the unfair business practice claim. (Compl. at 14.) As to four of them, Plaintiff
10 alleged that Defendants failed to comply with certain federal laws and regulations. (*Id.*)
11 However, neither the complaint nor Defendants’ notice of removal provide any indication that
12 the unfair business practice claim involves a dispute or controversy regarding the validity,
13 construction or effect of federal law.

14 Based on the foregoing, Defendants failed to meet their burden of establishing federal
15 jurisdiction. This action is therefore **REMANDED** to the San Diego County Superior Court.

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17 **IT IS SO ORDERED.**

18
19 DATED: January 7, 2009

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21 
M. James Lorenz
United States District Court Judge

22 COPY TO:

23 HON. WILLIAM McCURINE, Jr.
UNITED STATES MAGISTRATE JUDGE

24 ALL PARTIES/COUNSEL
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